

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF WESTFIELD GAS)
CORPORATION D/B/A CITIZENS GAS OF)
WESTFIELD REQUESTING (1) APPROVAL OF)
A NATURAL GAS SUPPLY AND DELIVERY)
AGREEMENT WITH HEARTLAND GROWERS)
INC.; AND (2) A FINDING THAT CERTAIN)
INFORMATION SUBMITTED IN THIS)
PROCEEDING IS CONFIDENTIAL AND)
EXEMPT FROM PUBLIC ACCESS)
REQUIREMENTS)

CAUSE NO. 43592

APPROVED: MAR 11 2009

BY THE COMMISSION:

Jeffrey L. Golc, Commissioner

Aaron A. Schmoll, Administrative Law Judge

On October 23, 2008, Westfield Gas Corporation, d/b/a Citizens Gas of Westfield ("Westfield Gas" or "Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") its Verified Petition in this Cause requesting (1) approval of a Natural Gas Supply and Delivery Agreement (the "Agreement") between Petitioner and Heartland Growers, Inc. ("Heartland"); and (2) a finding that certain information submitted in this proceeding is confidential and exempt from public access requirements.

On November 17, 2008, the Commission issued a docket entry finding that there is a sufficient basis for a determination that certain information Petitioner intends to submit in this proceeding should be held as confidential by the Commission on a preliminary basis. The docket entry directed Petitioner to hand deliver confidential information to the Presiding Administrative Law Judge and contained other directives regarding the submission of such information.

Pursuant to notice and as provided for in 170 IAC 1-1.1-15, a Prehearing Conference in this Cause was commenced on November 24, 2008, at 10:30 a.m. EST in Room 224 of the National City Center, 101 West Washington Street, Indianapolis, Indiana. Proof of publication of the notice of the Prehearing Conference was incorporated into the record and placed in the official files of the Commission. The Petitioner and the Indiana Office of Utility Consumer Counselor ("Public" or "OUCC") appeared and participated at the Prehearing Conference. No members of the general public appeared. On December 3, 2008, the Commission issued a Prehearing Conference Order in this Cause, which established a procedural schedule for this Cause.

On December 15, 2008, Petitioner prefled its prepared case-in-chief consisting of the testimony and exhibits of Jeffrey S. Brown and Jill A. Phillips. On February 2, 2009, the OUCC prefled its prepared case-in-chief consisting of the testimony of Mitchell Van Cleave.

Pursuant to notice as provided by law, proof of which was incorporated into the record and placed in the Commission's official files, a public evidentiary hearing was commenced on February 25, 2009, at 9:30 a.m. EST in Room 224, National City Center, 101 West Washington Street, Indianapolis, Indiana. The Petitioner and the OUCC appeared and participated in the evidentiary hearing, during which, the prefiled testimony and exhibits described above were admitted into the record. No members of the general public appeared or participated at the hearing.

Based on the applicable law and the evidence of record, the Commission now finds:

1. **Notice and Jurisdiction.** Notice was given as required by law. Petitioner Westfield Gas is a public utility and is subject to the jurisdiction of this Commission in the manner and to the extent provided by the laws of the State of Indiana, including certain sections of the Public Service Commission Act, as amended. The Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner's Characteristics.** Westfield Gas is a corporation organized and existing under the laws of the State of Indiana with offices at 2020 North Meridian Street, Indianapolis, Indiana. Westfield provides gas service to approximately 2,865 residential, commercial and industrial customers in and around Westfield, Indiana.

3. **Relief Requested.** In its Verified Petition, Westfield Gas requests that the Commission (1) approve the Agreement between Petitioner and Heartland; and (2) find that certain information submitted in this proceeding is confidential and exempt from public access requirements.

4. **Petitioner's Testimony.** Mr. Brown testified on behalf of Petitioner. Mr. Brown is Director of Sales and Marketing for Citizens Energy Group. Petitioner is an indirect, wholly-owned subsidiary of Citizens Energy Group.

Mr. Brown stated that Petitioner presently provides service to Heartland pursuant to its Large Volume Interruptible Service ("LVITS") rate schedule. He testified that Heartland owns and operates a wholesale greenhouse facility in Westfield Gas's service territory and described the historic natural gas usage of that facility. Mr. Brown stated his belief that Petitioner is at risk of losing substantial revenues from Heartland absent a special contract. He opined that the arms-length agreement Petitioner and Heartland negotiated strikes an appropriate balance between establishing appropriate cost-based rates and charges for the Heartland greenhouse facility while at the same time increasing the likelihood that Heartland will maintain or increase its historic level of usage and continue to contribute revenues that benefit Petitioner's natural gas utility system and its other customers of natural gas utility service.

Mr. Brown then provided an overview of the terms and conditions and the rates and charges set forth in the Agreement. He reiterated the benefits to other customers of the revenues that will result from Heartland maintaining or increasing its historic natural gas usage, which the Agreement will make more likely. He also pointed out that, under the Agreement, Heartland agrees to curtail its gas usage if requested by Westfield Gas to do so, which will enhance the

reliability of the natural gas utility system during times when capacity is needed. Mr. Brown testified that Petitioner's provision of service to Heartland under the Agreement will not alter any of its existing rates or charges and will not adversely affect the adequacy or reliability of service provided to its other customers. Additionally, he stated that Heartland is an existing customer and Petitioner has sufficient capacity to continue to meet the needs of the Heartland greenhouse facility to be served under the Agreement.

Finally, Mr. Brown testified regarding Petitioner's request that the Commission find that certain information submitted in this proceeding is confidential and exempt from public access requirements. In his affidavit submitted in support of Petitioner's request for confidential treatment of certain information, Mr. Brown stated that the information for which confidential treatment is sought is limited to certain negotiated terms and conditions that would be useful to Petitioner's or Heartland's competitors or third parties that Petitioner or Heartland may negotiate similar agreements with. He testified that the negotiated terms and conditions Petitioner has designated as confidential have actual and independent economic value from not being known to or readily ascertainable by persons with whom Petitioner and Heartland transact business or compete. He stated that Petitioner and Heartland make reasonable efforts to maintain the secrecy of the information sought to be protected, including, but not limited to, limiting access internally to their respective employees and agents who need such access in order to perform their responsibilities and not releasing the confidential information externally without appropriate confidentiality protections.

Ms. Phillips, Rates Manager of Citizens Energy Group, also testified on behalf of Petitioner in support of the Agreement. Ms. Phillips testified that she participated in the development of the rates and charges set forth in the Agreement. She described those rates and charges, which she explained will be subject to any and all other existing and future appendices and riders that are approved by the Commission and applicable to the LVITS rate schedule. Additionally, she stated that the Customer Charge and Commodity Charge paid by Heartland pursuant to the Agreement and any other charges paid by Heartland pursuant to the LVITS rate schedule will be adjusted to reflect any increases (or decreases) to such charges approved by the Commission. Ms. Phillips testified that while the rates and charges Heartland will pay pursuant to the Agreement were negotiated at arms length, they exceed the variable cost of serving the Heartland facilities. Therefore, Ms. Phillips stated, the proposed Agreement's rates and charges will not only allow Petitioner to recover its incremental costs of providing service to the Heartland facilities, but also will provide a contribution to the recovery of Petitioner's fixed costs. Ms. Phillips also discussed the impact to the rates and charges paid by other customers if Heartland were to stop purchasing gas from Petitioner. She explained that, as with virtually every utility, Westfield Gas is a capital intensive business whose non-fuel costs are primarily fixed and thus do not vary substantially with customer usage. Consequently, Ms. Phillips testified, if Heartland were to stop purchasing gas from Petitioner, very little if any non-fuel costs would be avoided and, as a result, the loss of Heartland as a customer would shift those fixed costs to remaining customers and increase their rates.

5. Public's Testimony. Mitchell Van Cleave, a Utility Analyst employed by the OUCC in its Natural Gas Division who focuses on the concerns of small and medium business

consumers, special contract issues and demand side management and energy efficiency issues, testified on behalf of the Public.

Mr. Van Cleave described his review of the Verified Petition and the testimony of Mr. Brown and Ms. Phillips in support of the Agreement. He stated that his analysis of the testimony, the Agreement and Petitioner's industrial tariff rates confirms Mr. Brown's statement that the Agreement strikes an appropriate balance between establishing appropriate cost-based rates and charges for the Heartland greenhouse facility while at the same time increasing the likelihood that Heartland will maintain or increase its historic level of usage and continue to contribute revenues that benefit Petitioner's natural gas utility system and its other customers of natural gas utility service.

He also agreed that the Agreement will not adversely affect Petitioner's existing or future customers. He explained that the analysis he performed, including bill impact calculations, confirms the testimony of Ms. Phillips that the rates and charges Heartland will pay pursuant to the Agreement exceed the variable cost of serving Heartland and provide a contribution to the recovery of Petitioner's fixed costs.

Mr. Van Cleave explained that the OUCC analyzes and reviews each special contract presented on its own merits and considers the impact on the remaining customer base. He emphasized that a recommendation from the OUCC in one case should not imply that other cases will be similarly endorsed or questioned by the OUCC. In this case, Mr. Van Cleave stated the OUCC's position that the Agreement is in the public interest and should be approved.

6. Commission Discussion and Findings. When reviewing a contract between a public utility such as Petitioner and one of its customers for utility service at rates and charges other than those provided for in the utility's tariff, our charge pursuant to Indiana Code Sections 8-1-2-24 and -25 is to determine whether the contract is reasonable and just, practicable and advantageous to the parties and not inconsistent with the purposes of the Public Service Commission Act.

In making that determination in past proceedings, we have considered whether the rates negotiated between the utility and the customer will be sufficient for the utility to cover the incremental cost of providing service to the customer and also provide a contribution to the recovery of Petitioner's fixed costs. We also have considered whether the utility has sufficient capacity to meet the customer's needs. Finally, we have recognized the importance of special contracts that help assure a utility's retention of a large customer and preservation of that customer's contribution to the utility's fixed cost recovery. *See, e.g., Indiana Gas Company, Inc.*, Cause No. 43298 at 25 (Feb. 13, 2008).

Our review of the proposed Agreement and testimony in support of it filed by Petitioner and the Public indicates that the rates and charges to be imposed under the Agreement, which will help assure Petitioner's ability to retain and possibly increase the gas load required to serve the Heartland greenhouse facility, will allow Petitioner to recover its incremental cost of providing service to that facility and provide a contribution to the recovery of Petitioner's fixed costs. The evidence also shows that Petitioner has the capacity to meet Heartland's needs and

Petitioner's provision of service under the proposed Agreement will not alter any of Petitioner's existing rates or charges or adversely affect the adequacy or reliability of service provided to Petitioner's other customers. The Commission, therefore, finds the Agreement and rates, charges, terms and conditions contained therein are reasonable and just, as well as non-discriminatory, and should be approved.

Finally, we find that the information Petitioner submitted under seal shall continue to be treated as confidential pursuant to Indiana Code Sections 8-1-2-29 and 5-14-3.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

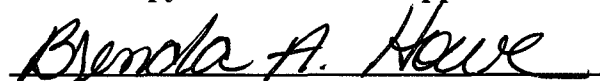
1. The Agreement and the rates, charges, terms and conditions contained therein are reasonable and just, practical and advantageous to the parties and not inconsistent with the purposes of the Public Service Commission Act and are hereby approved.
2. Petitioner is hereby authorized and directed to implement the rates, charges, terms and conditions of the Agreement, as executed by Petitioner and Heartland.
3. The confidential information submitted in this Cause is determined to be confidential trade secret information as defined in Indiana Code Section 24-2-3-2 and shall be continue to be held as confidential and exempt from public access and disclosure pursuant to Indiana Code Sections 8-1-2-29 and 5-14-3.
4. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS, SERVER AND ZIEGNER CONCUR:

APPROVED:

MAR 11 2009

I hereby certify that the above is a true and correct copy of the Order as approved.



Brenda A. Howe

Secretary to the Commission